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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,160

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Fredrica V. Coates

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EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

08/06/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/773,160	Applicant(s) COATES, FREDRICA V.	
	Examiner Karin M. Reichle	Art Unit 3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 20-33 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 20-27 and 29-33 is/are rejected.
- 7) ☒ Claim(s) 28 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 January 2008 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>Appendix A</u> . |

DETAILED ACTION

Response to Amendment

1. The amendment filed 1-19-08 is accepted. However, the amendments to the specification filed 1-19-08 have not been entered because such do not comply with 37 CFR 1.121, i.e. do not show the amendments made to the last known text, i.e. as amended 1-22-07. With regard to the drawings see the discussion infra. Furthermore, the claims filed 1-18-08 do not comply with 37 CFR 1.121 because such does not include a complete listing of the claims in order with parentheticals, i.e. does not list claims 9-16 with the paraenthetical “cancelled”. The next response, if any, must include a claims section in compliance with 37 CFR 1.121, i.e. list claims 1-19 with the parenthetical “(Cancelled)”.

Specification

Drawings

2. The drawings were received on 1-19-08. These drawings are not approved by the Examiner. First, the first three sheets of Figures appear to be duplicates of those filed 1-22-07 which were approved. Second, the annotated Figure 9 is the same as that filed 1-22-07 which was not acceptable. Third the replacement Figure 9 is not the same as the annotated Figure 9 but is the same 5-27-04 which was objected to also. Therefore see the following paragraph.

3. The drawings are objected to because in Figure 9, the upper 42 should have a dashed not solid line. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement

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drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

4. Applicant is advised that should claim 20 be found allowable, claim 23 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

See the last section of claim 1 and claim 23.

5. Claims 20-27 and 29-33 are objected to because of the following informalities: In claim 20, line 1, before “second”, --a-- should be inserted. In claim 32, line 9, “innr” should be --inner--. Appropriate correction is required.

Claim Rejections - 35 USC § 112

6. Claim 28 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 28 depends from itself. Accordingly claim 28 will not be further treated on its merits.

7. Claims 32-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The description of the connection between the inner layer and the anchor layer on lines 6-8 of claim 32 and claim 33 is inconsistent with the description on lines 9-10 of claim 32, i.e. are they detachably coupleable or stitched? Also, the description of the outer layer on line 8 is inconsistent with that on lines 4-8 and 9-10, i.e. the outer layer is at least indirectly attached to the inner layer. Are the releasable fasteners in claim 33 and the detachable coupling of claim 32 one and the same, i.e. how many couplings/fasteners at a minimum are being required?

Claim Language Interpretation

8. The terminology “fluid-resistant” in claims 32-33 will be interpreted as resistant to fluid and “resistant” is interpreted as “giving or capable of resistance”, i.e. its dictionary definition. Therefore, absent claiming specific dimensions of resistance to fluid, the terminology “fluid-resistant” will be considered relative. Due to the lack of clarity discussed supra, claim 32 will be interpreted as requiring the layers be detachably coupleable to each other and the inner

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layer at all four sides extending from such location where detachably coupleable to respective edges on the inner side of the garment and the inner layer not being directly attachable to the outer layer. Due to the lack of clarity discussed supra, claim 33 is interpreted to further define the detachably coupleable layers as having releaseable fasteners as claimed providing such coupling in claim 33. It is noted that the language of claim 20, lines 7-8 is interpreted to require non-monolithically formed layers. It is further noted that such is considered to recite the same structure as previously presented on lines 3-7. The terminology “adjacent” as defined by the dictionary is “Close to, lying near”. Therefore, it is noted that the terminology “adjacent”, absent claiming of specific distances, is considered relative

Claim Rejections - 35 USC § 102

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 20, 22-27 and 29-31 are rejected under 35 U.S.C. 102(b) as anticipated by Bernard ‘983.

Claims 20 and 22-23: See Claim Language Interpretation section supra hereinafter also referred to as CLI and Figures 7-9, and note the blow-ups of Figure 9 in Appendix A attached to this action, col. 1, line 55-col. 2, line 6, col. 2, lines 14-31 and col. 3, lines 23-43, i.e. the first part/outer layer is the outer layer of 15a, the first part/anchor layer is the inner layer of 15a, the stitching is 17. The outer layer and anchor layers are separate fabrics layers, the former shaped to conform to a buttock and leg region of the user, see Figures, and the latter having a shape conforming to that of the former. The second part/pocketed sling is 53 which includes four sides

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and is detachably coupled to the anchor layer but not directly detachably coupled to the outer layer, i.e. only indirectly so coupled, by releasable fasteners which are snap fastener of two portions 51, 52 located respectively on the anchor layer and sling, see blow up in Appendix A, col. 2, line 7 and col. 3, line 21, elements 20-21 as shown in Figure 2, col. 3, lines 31 and 36-41 and elements 20a, 21a, 50-51 as seen in Figures 7-9. The sling extends from the anchor layer on the inner side of the undergarment when the undergarment is worn to form a pocket for retaining a fluid absorbent pad, i.e. diaper D, facing inwardly away from the anchor layer. The sling is displaced inwardly from corresponding sides toward the center of the anchor layer and inwardly from the stitches between the anchor layer and the outer layer at, e.g., 7b, 7c, 8b, and 8c. It is noted that the entire periphery/all portions of all four sides of the sling is/are not required to be so inwardly displaced from the entire periphery of the anchor layer. However also note the position of 31 in Figure 3 and the position of 51 and 52 in Figures 7-9 with regard to stitching 17. The outer layer overlies fasteners on the anchor layer, e.g. 20a, 21a, 50 and/or 52. It is noted that the fasteners which are overlaid by the outer layer are not required to be the releasable fasteners on the sling and anchor layer. It is also noted that the fasteners are not required to be completely overlaid, i.e. unexposed, by the outer layer, e.g. the outer layer overlies a portion of the fasteners 51, 20a, 21a which are on the inside thereof and fasteners 52 when the garment is unfastened and overlies completely some fasteners, e.g. 20a, when the garment is fastened, see Figure 1.

Claim 24: The releasable fasteners 51 on the anchor layer are located only “adjacent”, see CLI, opposite ends of the pocketed sling, i.e. located between but only “adjacent” opposite terminal ends, i.e. both lateral and longitudinal, of the sling layer, see Figures 7-9. It is noted

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that extent of the ends relative to overall longitudinal and lateral extent of the sling has not been set forth.

Claim 25: The releasable fasteners on the anchor layer are located between opposite ends of the pocketed sling, see discussion of claim 24.

Claim 26: The anchor layer is attached to the outer layer “adjacent”, see CLI, opposite ends of the outer layer, see 17 in Figures.

Claim 27: The pocketed sling is attached to the anchor layer “adjacent” to, see CLI, but spaced from the opposite ends of the outer layer where the anchor layer is attached to the outer layer, see discussion of claims supra, i.e. the sling is attached inwardly from corresponding sides toward the center of the anchor layer and inwardly from the stitches between the anchor layer and the outer layer at, e.g., 7b, 7c, 8b, and 8c. Note the position of 31 in Figure 3 and the position of 51 and 52 in Figures 7-9 with regard to stitching 17.

Claim 29: The anchor layer is attached to the outer layer only “adjacent”, see CLI, peripheral edges of the anchor layer and the outer layer, see discussion of claim 26 supra.

Claim 30: The anchor layer is attached to the outer layer around the entire periphery of the anchor layer, i.e. see stitching 17 in Figure 7.

Claim 31: The pocketed sling is attached to the anchor layer inwardly from peripheral edges of the outer layer, i.e. see discussion of claim 20, i.e. the sling layer is displaced inwardly from corresponding sides toward the center of the anchor layer and inwardly from the stitches between the anchor layer and the outer layer at, e.g., 7b, 7c, 8b, and 8c. It is noted that the entire periphery/all portions of all four sides of the sling layer is/are not required to be so inwardly

displaced from the entire periphery of the anchor layer. However also note the position of 31 in Figure 3 and the position of 51 and 52 in Figures 7-9 with regard to stitching 17.

Claim Rejections - 35 USC § 102/103

11. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

12. Claims 32-33 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Bernard '983.

See CLI *supra* and the discussion of claims *supra*. Additionally the inner layer at all four sides thereof extend from the location of fasteners 51 52 to respective free edges, e.g. edges of 16a, upper edges of 27 adjacent 30 and/or edges of 25c, 25b adjacent 32, see Figures 3, 6, 8-9. Furthermore, the outer layer is disclosed as a fabric sheet made of any fabric suitable for baby garments such as rayon. Since at the very least all sheet materials provide some resistance to fluids, absent claiming of specific water resistance, such outer layer is considered "fluid-resistant". The sling layer is also claimed as being "fluid resistant". While the pocket of the embodiment of Figures 1-6 is disclosed as made of water repellant or water proof material and having elements 16, 27, 25, 25a and the embodiment of Figures 7-9 is disclosed as also having a pocket but one which is detachable and includes elements 16a, 27a, 25c, 25b, the '983 does not explicitly disclose whether the pocket of Figures 7-9 is also water repellant or water impermeable. Therefore, it is the Examiner's first position that '983 includes a "fluid resistant" sling layer either because the pocket is of some sheet material and since all sheet materials provide some resistance to fluids, absent claiming of specific water resistance, such sheet

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material is considered “fluid-resistant”, or because the pocket is of water repellant or water impermeable material, i.e. “fluid resistant”. However, even if not already “fluid resistant” for such reasons, it is the Examiner’s second position that to employ a water repellant or water impermeable material as taught by ‘983 for the pocket of the first embodiment of Figures 1-6 also for the pocket of the embodiment of Figures 7-9 would have been obvious to one of ordinary skill in the art in view of the recognition that such would provide the pocket of the second embodiment with the same the fluid resistant capabilities and the desire of ‘983 to provide a garment in the second embodiment similar to that of the first embodiment but with a detachable pocket.

Claim Rejections - 35 USC § 103

13. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

14. Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bernard ‘983 in view of Wyant ‘065 or Siudzinski ‘649.

This claim requires the fasteners be filamentary fasteners while ‘983 teaches cooperating snap fasteners. However, see ‘065 at Figure and col. 3, lines 19-23 and ‘649 at Figure and col. 6, lines 20-22. To make the cooperating snap fasteners for fastening components of an absorbent undergarment together of ‘983 cooperating filamentary fasteners, i.e. VELCRO, instead would be obvious to one of ordinary skill in the art in view of the interchangeability as taught by ‘065 and ‘649.

Response to Arguments

15. Applicant's remarks have been carefully considered but are either deemed moot in that the issue/rejection addressed has not been reraised or deemed not persuasive for the reasons set forth supra. Specifically, Applicants remarks are not commensurate in scope with the claim language and the teachings of the prior art as set forth supra, i.e. narrower than the claim language and/or teachings.

Conclusion

16. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any new grounds of rejection were necessitated by Applicant's cancellation of claims 7-8 and 17-19 and the addition of claims 20-33.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Karin M. Reichle whose telephone number is (571) 272-4936. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Karin M. Reichle/
Primary Examiner, Art Unit 3761

August 3, 2008

Appendix A

FIG. 9.

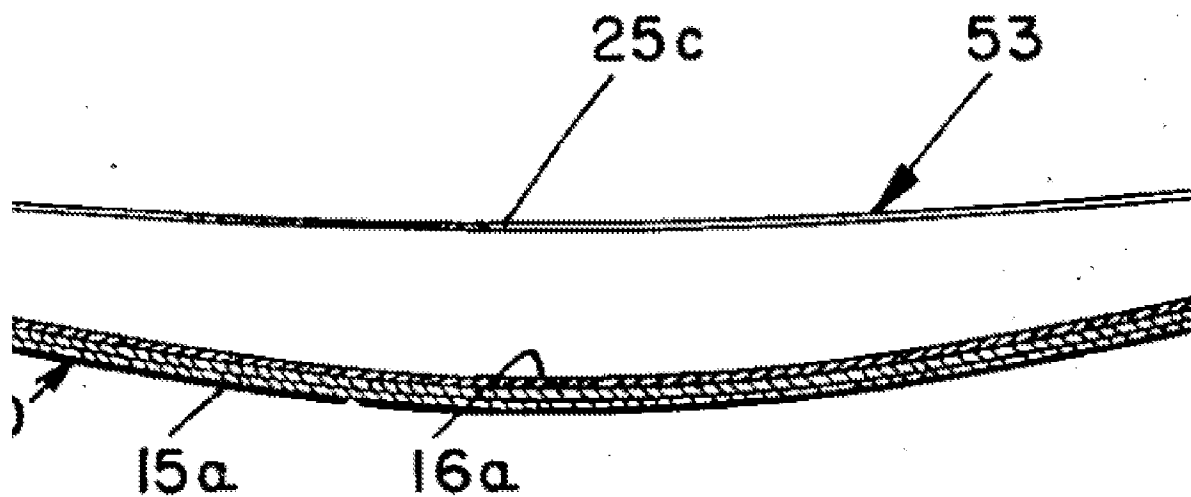
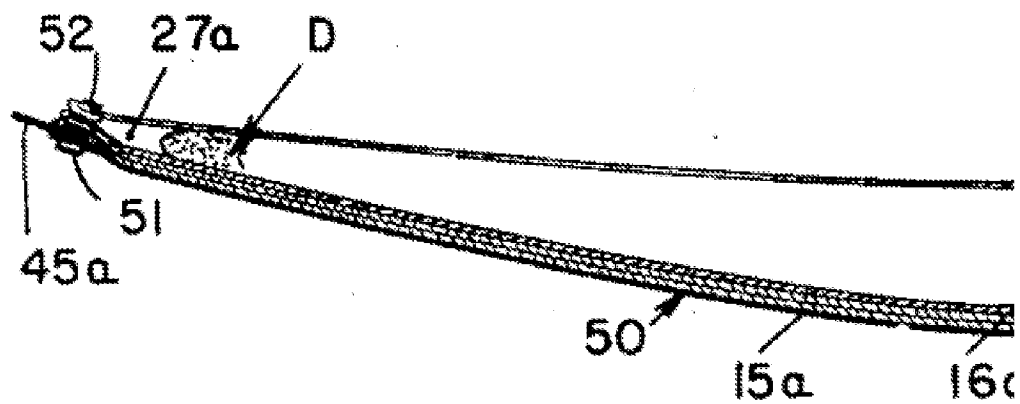


FIG.



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